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ARGUMENT

OF

JAMES T. AUSTIN,

ATTORNEY GENERAL OF THE COMMONWEALTH,

BEFORE THE

SUPREME JUDICIAL COURT IN MIDDLESEX,

ON THE

CASE OF JOHN R. BUZZELL,

ONE OF THE TWELVE INDIVIDUALS CHARGED WITH BEING CONCERNED IN DESTROYING THE

URSULINE CONVENT,

AT CHARLESTOWN.

Reported verbatim, by the Stenographer of the Atlas.

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ARGUMENT.



May it please your Honors :—Gentlemen of the Jury.

I CONGRATULATE you and myself, that this most extraordinary case is now drawing to a close. I shall endeavor, as far as I may be additionally concerned in it, to tax your patience as little as possible; and I shall act thus, because, if I am not very much mistaken, there is no point in this case that ought to be productive of a moment's doubt in the mind of any sensible and intelligent man. And yet, Gentlemen, I will not attempt to disguise from you the important nature of this trial. It is an important case. Important to the prisoner, who has forfeited his life to the laws of his country; and important to the country, because its laws have been violated, and its peace has been disturbed. But, most of all, Gentlemen, is it important to you! The crowd who have assembled in this Court-house, day after day, look upon this trial as the trial of JOHN R. BUZZELL alone. It is not so. You, Gentlemen,—I say it with all respect,—you are also on your trial before your country, before posterity, and before your God. The events you are investigating are to be recorded in the history of your country; the connection you have had with them is to be recorded also, and both will go down to posterity as long as history shall exist. This trial—like some of those that have come down to us in the political history of the people whence we sprung, that proceeded, or were connected, with their great revolutions, and the crises of

General Records History

their nation—or like others, which took place in the days of our forefathers,—is to show how far the people of this country are competent to self-government ; how far our political institutions, of which Trial by Jury is one, consist with the safety and security of the citizens, the rights of property, personal protection, and those liberties and privileges, which the government was established to secure ; how far our tribunals of justice are temples consecrated to truth, where all her ministers are holy ; or how far they are erected for some idol worship, where prejudice, passion, partiality and base fear, are attendants at the altar. It is yet to be seen, whether there is safety and security in a confident reliance on the supremacy of the law, for protection to the innocent, and punishment of the guilty ; or whether these forms of judicial trial are assumed in bitter mockery and scorn, to delude and deceive us ;—whether reliance may be placed on the stern integrity, the enlightened perception, the immovable justice of the men with whom, in the course of our proceedings, the ultimate decision is to rest.

According to the theory of our laws, reliance may be placed upon the integrity, the intelligence, and the immovable sense of justice of the men I address. I have no wish to give utterance to a doubt upon this subject ; but yet I say that you are upon your trial ; and the more so, from the way in which you have been selected. The prisoner has only exercised a right that belongs to him, in selecting you as the individuals who are to try him ; but in choosing two from Charlestown, he has placed you in a very delicate and responsible situation. If, however, he calculates, gentlemen, in your possessing a bias, he is deceived ; because you have all sworn that you have no bias. But it is difficult, sometimes, to separate from the mind preconceived notions, however much we may wish to do so ; and prejudices frequently influence our conduct, unconsciously to ourselves. Among the prejudices likely to operate in a case like the present, is that which relates to a capital trial. You have been told, that such is the responsibility resting upon a juror in a capital case, that it is often impossible for him to decide properly,—as if a juror had any thing to do but to decide upon the facts before him.

The counsel for the defence have told you, gentlemen, that the law under which the prisoner has been indicted does not apply to this case. You have nothing to do with that. If the learned counsel are right, that is a matter for the Court, and the Court will take care that your verdict does not harm the prisoner. But there is no capital trial in this country, properly so called. If you find a verdict against the prisoner, and the Court pass judgment upon him, he cannot be executed upon that judgment alone. This Court is not like the Circuit Court, which can try prisoners one week, and sentence them to execution the next. The record of sentence must go hence to the Governor and Council, and there is a statute of the Commonwealth which permits those individuals to commute the decision of the judge, and enables them to punish the prisoner in part, or not at all, exactly as they please. Permit me, then, to say, that, in giving a verdict in relation to this prisoner, you are no more instruments in his punishment, than the officer who arrested him, the turnkey who locked him up, or we who have talked to you in the case. It is true he cannot be punished without your verdict; but he is only on the road to punishment, when you say he is guilty.

Again, there is a prejudice existing in relation to the crime which he is accused of having committed. I have been shocked to hear some of the suggestions which have been thrown out in relation to the character of this crime. Is it a trifling offence? One which might be decided upon and punished by a justice of the peace, or suffered to pass without any punishment at all? In my mind, any conclusion of this kind is erroneous. This transaction unites within itself every circumstance of WICKEDNESS, DEPRAVITY, VIOLENCE and BRUTALITY, that ever combined together in any one transaction in the whole history of crime.

It is ARSON, BURGLARY, ROBBERY, SACRILEGE and MURDER, united;—perpetrated, too, with the most shameless recklessness, and the most cruel wantonness of purpose—with the most fiend-like deliberation, with the most protracted and con-

tinued atrocity ;—without the slightest motive, that can, in the least degree, palliate this concentration of all detestable villany—and with no excuse now offered, by way of mitigation, that does not dye, in deeper guilt, the miscreants by whom it was committed.

Let me carry you, for a single moment, to the scene of this midnight devastation ; let me ask you to look at it before the torch of the incendiary had reduced it to a ruin.

You find there a large estate, purchased and paid for by three native American citizens ; held by title deeds of the same validity and efficacy as those by which you, Mr. Foreman, hold your estate, or any of your pannel their farms or dwelling houses. On this piece of land, before rude and uncultivated, a large and extensive pile of buildings was erected, and honestly paid for, to the mechanics and builders employed in procuring the materials and doing the labor, among whom were several of the immediate neighbors of this valuable property. The grounds were laid out with a regularity and beauty, that any but Vandals would have spared, for their elegance and taste. Lawns, gardens, fruit-trees, flowers, bloom around ; and, in one remote corner, the hand of affection and piety had consecrated the last sad sleeping chamber of the hallowed dead. Within the walls, eight feeble women found their home, with no protector but the God whom they served, and the laws they were willing to obey. This recluse society of women were religious women—devoting themselves to a consecrated service, on the faith of that article in our bill of rights, which secures to every one the utmost toleration, and the most perfect right of enjoying, professing and observing, whatever religion he pleases.

But, although retired from all active commerce with the world, they still had connection with it in one of the most useful, honorable, and interesting employments. They were a community of instructors—teachers of youth—school-mistresses. In a country, boasting of its regard for education,—all whose institutions are founded on the presumed knowledge, and consequently on the education of the people,—these eight women, with two lay sisters, preparing for the same purpose,

devoted themselves to the instruction of female youth ; and such was their assiduity and attention, that, for several years, they had received a large patronage from the most intelligent and respected of your fellow-citizens. They had, at this time, sixty pupils, of whom forty-seven, from six to sixteen years of age, were then within the walls of the institution.

With no debt unpaid ; no duty unperformed ; with no personal enemy ; and giving, as far as they knew, no cause of offence to any human being ; unarmed, because ignorant of danger ; defenceless, because not apprised they had any thing to fear ; surrounded by a population of an hundred thousand people, who boast of their attachment to peace, order, tranquility and law—these women retire to rest. Suddenly they are awakened by frightful yells, like those which startled our ancestors, when the warhoop of the *native* savage burst upon their midnight slumbers. They start from their beds frightened and alarmed. The little ones, in the agony of their fear, gather under the wings of their protector—she scarcely less frightened than themselves. The bonfire, round which the demi-savages are dancing, throws its horrid glare into the chambers. The sick and dying woman faints ; the terrified lunatic is driven again to delirium ; stones fly ; the windows are broken ; life is insecure ; and the distressed inmates are obliged to flee. All leave the place but one. One timid female only remains, to face this ferocious mob ; but the woman's heart, under the influence of a mother's feelings, gains more than a lion's strength. Yes, gentlemen, the mother—(not by ties of consanguinity)—that old, infirm woman, whom you saw on the stand, she dares to remain, lest any of her children, any of her sisters (by religion), should be exposed to the licentiousness of these lawless ruffians. She traverses the building, from the basement to the cupola ; opens every chamber, and runs from place to place, exclaiming in agony, like David of old, "My child, my child." But all happily are out of danger, and she goes back again towards her own room, to save the little property of the institution. She finds it filled with armed men ; she turns into the passage, and there beholds another band. She then retreats to the garden, where she finds the cowering children, driven

like doves from their dove-cote. All then leave the institution. Look at that sad procession, gentlemen, quitting the burial place of all their happiness. Mr. Cutter has told you, that when he met them, they did not speak a word; that they looked stupified; and he had to gather them into a place of safety, as you would gather or drive sheep into a pen. There was no weeping, no exclamations of sorrow, no tears—‘grief drank the offering ere it reached the eye.’ Presently the building is sacked. Beds, furniture, plate, vestments, the decorations of the altar, and the Word of God, are alike the prey of this desolating multitude. Broken or stolen—all is lost. Fire is deliberately applied. A torch, furnished to assist the engines in putting out a fire, is designedly used to kindle one. The work of destruction goes madly on, and that noble building, wrapt in flames, rolls its accusing volumes to the skies, till naught remains but heaps of blackened ruin. The out-buildings share the same fate. The tomb, too, is violated—as if nothing was sacred enough to be preserved from destruction. The children are sought for by their agonized parents, and saved, in their night-clothes, from the devouring element. The women, too, are preserved—all?—all but *one*. *She* is killed by alarm and exposure. Is not this murder? Why not? What is murder, but the felonious taking of life, a little before the time decreed by Providence for its duration shall have expired?

It would be bad enough, if all this ended here. But this is but the beginning of the evil. The Commonwealth, the nation, the people, are disgraced and degraded. We seem to have rolled back again the tide of improvement; to have receded in the march of mind; to have become more bigoted, instead of more liberal; to have proclaimed universal toleration in our Constitution and our laws, and to have practised more intolerance, with greater penalties, than our ancestors did, when they persecuted the Quakers, or denounced the Baptists. We talk about liberty and equal rights, and practise the most cruel tyranny that ever disgraced a despot. We punish for opinions, for modes of faith and forms of worship; and this, too, before trial, and without trial. We are cowards as well as vil-

lains. We make war on old women and young children—first taking care to inquire if they have a gun or pistol within their dwelling-house. The head magistrate of the town in which this outrage was committed, where was he? He goes up, looks round, admonishes the people, that he thinks they have done enough; and then, having sore eyes, goes home and to bed. Where are the other magistrates—the militia—the neighbors? None are to be found. No neighbor, no magistrate, no friend, to take the part of these helpless women. Nothing is courageous but crime. It will be inscribed in our history, that here, at least, the age of chivalry is gone. The mob put down every thing and every body. They ravage, as they please, in the very luxuriance of iniquity.

And where is all this done? On one of those hill-tops, which, less than sixty years ago, was consecrated, by the best blood in our country, an altar to liberty and the rights of man. By the side of that ever memorable height, which tells to all time, the glory and the greatness, the courage and the patriotism, of your fathers, this defendant, and his associates, have inscribed the degeneracy and the baseness of some of their descendants. By that glorious monument, which is rearing its proud and noble height to catch the first sun-light of the morning, and throw it back, in honor of the gallant spirits who died there for freedom, this defendant, and his associates, have left a blackened and mournful memorial of the manner in which that freedom has been exercised by the race that have succeeded them. Destruction is more speedy than erection. The column on Bunker Hill rises slowly to the honor of our fathers—but the blackened battlements upon Mount Benedict are the work of a night. See to it, that it be not so with the State!

Can any sympathy be felt for a man who makes war upon women and children, destroys their property, endangers their lives, violates all the laws of the land; and, in so doing, inflicts a wound upon the country, from which it can never recover?

Where, in the pride of your American feelings, do you carry a stranger, who asks to see the high places of your national glory? To Bunker Hill! And when your hearts are warmed

there, with reverence for the ancestry from whom you sprung ; when you recount to him the sacrifices they made, and the sufferings they endured, to sustain the infant fortunes of your country ; when you dilate with rapture on their virtues and patriotism, their love of order and liberty, and their resistance to tyranny, oppression, and the imposition of lawless power—what if he shall cast his eyes onward, and inquire the name of that other monument which frowns so frightfully from Mount Benedict ? What will you say for yourself, or to him ? The chill of fifty winters cannot strike such an ice-bolt through your heart, as would the question of that stranger.

The Russians have a vapor bath, in which the heat is kept at above an hundred degrees, and when every pore is dripping with perspiration, they pass from the building, and plunge fearlessly through the broken ice of the Neva, or roll themselves naked on their eternal snows. An American tried the experiment there, but he died. These rioters have introduced such a bath for American patriotism. The transition from the house to the river, is not greater to the body, than is that to the mind, from Bunker Hill to Mount Benedict !

There is but a single addition that can be made to this frightful reality of midnight robbery, plunder, desolation and crime. It is, to be forced to say, that we cannot ascertain who did the deed ; that we know not the culprits ; that we are unable to single out one man in the thousand who led on this band of ruffians to their act of riot and debauchery. It is to add to the disgrace of the law that could not *prevent* all this ruin, the infamy of not being able to discover the perpetrators, and to allow these rioters to laugh at the imbecility and supineness of the boasted power of a judicial tribunal.

One addition only, did I say, gentlemen ? There is yet a worse calamity that may befall us than all that has happened. Such a misfortune will happen if ever—may God forbid it—if ever the tribunals of justice prove traitors to their trust ; if, to a Jury of the Country, fair, honest and full evidence should be presented, and such a jury should be recreants to their duty. Then, indeed, it might be said, the days of American liberty

were numbered—then, indeed, it might be said, that the people were unfit for free government—then, indeed, it might be said, that the last hope of civil and religious liberty had expired; and from the anarchy which is to follow, we might consider it a release, to be subjected to the most iron despotism that ever ground an unworthy people to the dust.

If, then, you come to the inquiry of this case, with any of those doubts and prejudices which have been abroad, I beg you, for your own sakes, for the sake of your children, and the country, which must last longer than either, to dismiss them from your minds. I beg you to consider, that a blot has been brought upon the escutcheon of that country; that a great crime has been committed—an act of barbarism, for which language has no name—a crime, which renders the individuals who committed it, obnoxious to all the indignation and punishment ever exercised towards the most flagitious offender.

Let us now examine, gentlemen, the evidence before us; and see what is your duty in relation to it. I have not the slightest inclination to *express* any doubt that you will endeavor to understand—that you will faithfully perform that duty. And, “good men and true, stand together, and hearken to your evidence.”

Before we proceed to the testimony which has been adduced in this case, it is necessary to establish certain rules in relation to it. My learned friends seem to have thought that you might do as you liked in this matter—that you might select certain parts, and leave others, and treat the whole, like the merchandise in a trader’s shop, to be taken or left at the purchaser’s pleasure. I must be permitted, however, to tell you, gentlemen, that evidence can only be rejected by a jury in accordance with certain rules of law, and rules of common sense, established by wise men, and the efficacy of which has been proved by the experience of ages. A jury have no more right to depart from these rules, than they have to commit the offence for which the prisoner at the bar is indicted. They cannot set aside Catholic, any more than they can Protestant, testimony. If they could set aside Catholic testimony, they might do the same with Bap-

tist, Unitarian, or Methodist testimony. Once admit that lines are to be drawn in this way, and our courts become useless; we have only to ascertain the religious faith of the jurors, to know at once how a case will be decided.

The rules of law, gentlemen, have been read to you, and I beg here to say, that the only duty of a jury is to draw, as intelligent men, an inference from the evidence which is laid before them. We cannot tell whether the fact it establishes is true or not; all we can say, is, that, by the testimony, it is true;—and, if afterwards, it is found to be false, we can still say, that we have exercised our best judgment, and are innocent ourselves.

In the first place, then, you are to consider, in relation to this case, the number of witnesses that have been brought forward. The law says, indeed, that one unimpeachable witness is as good as a hundred; but in a case like this, numbers strengthen each other. Their united testimony is a cable of many strands—these cords are not to be separated. One might not be sufficient to moor a cock-boat, yet, united with others, they hold secure the mightiest vessel that ever floated on the ocean. So with testimony. Look at the number and variety of the witnesses in the present case. It is possible that witnesses, in some cases, might be in a confederacy, and then their number is of no consequence; but when they come from the East and the West, from the North and the South, no one of them knowing what the other would testify, and having no connection with each other, and yet all testifying alike,—he must be an infidel, who refuses to give credit to their statements. It is by such testimony as this, that men are governed in common life; and a jury cannot act differently, without disregarding their oaths. Now consider the strength of the present case in this way. Here are men, brought in sets from all quarters—wholly unconnected—having no knowledge of each other, until they found their names in the same subpoena—entire strangers—and, yet, all coming to the same point—all testifying to the same fact—all agreeing that Buzzell is one of the men whom they saw, on the night of the 11th of August, engaged in the

destruction of the Ursuline convent. Look, I say, at the astonishing strength of this evidence. Judge Fay could not tell that Buck would be here as a witness; Colonel Gerry did not know of Judge Fay; Thaxter never heard of Littlefield; Littlefield never heard of Logan; Logan never heard of Balfour; and so on with all the rest. Nothing but *truth* brings them here; nothing but the fact of their having all been at the same place, and seen the same occurrences take place.

Then, gentlemen, we must despatch another matter connected with this case—the *discrepancy* of testimony. It is a rule of law, that this discrepancy is the very thing that entitles evidence to credit. If a number of men, stating themselves to have heard a certain conversation, repeat that conversation in precisely the same words, you set their statements down as a contrivance. Here are half-a-dozen persons taking down what is said in this Court. What they write, is, in substance, true—but no two of them agree precisely in words. One of the most profound and attentive observers of human nature, in alluding to human testimony, has spoken of it as substantial truth under circumstantial variety. Men do not see exactly alike, because they are not in the same position. The variety of description is the test of truth.

I will bring the matter to your own judgment. I am addressing twelve Christians. How got you your knowledge of Christianity? From the Evangelists. There is one thing recorded by those Evangelists, about which there can be no doubt. I mean the inscription on the cross. All the holy men, to whom I have alluded, agree that there was an inscription, but all differ in relation to its phraseology. Matthew says, the inscription was, “This is Jesus, King of the Jews”; Mark, “The King of the Jews”; Luke, “This is the King of the Jews”; and John, “Jesus of Nazareth, King of the Jews.” And who, that had the happiness to believe there was a cross, ever had the misery to doubt about it because of the difference of the phraseology in which the inscription is recorded? If, however, the principle contended for by the learned counsel on the opposite side, be admitted, you must disbelieve the sublimest part

of our religion, because there is a discrepancy among the witnesses. I ask you to judge of the testimony in this case, by the same rules that you would apply to the sacred subject to which I have just called your attention. I ask you to judge of it as wise, honest and intelligent men. In these days of scepticism, every thing may be made a subject of doubt. Some doubt the existence of a Supreme Creator ; others, that we live, move, and have our being. The days of the heathen philosophers have returned upon us. All things are made uncertain. Ingenuity, indeed, may make every thing cloudy ; and it is said to be possible for a Yankee “to whittle any thing down to the little end of nothing.”

Again, I ask you to look at the individual witnesses. How are you to get testimony in any case? You must take that of your fellow citizens,—and you cannot find better men than the country produces. If we breed liars, we must take them ; but if, on the contrary, we raise *men*, and “souls are ripened in our Northern sky,” then we may safely rely upon such men—and none are better than the individuals who have lately been before you. According, however, to one of my learned brethren in the defence, not one honest witness has appeared upon the stand ; he has fleshed his scymetar upon every one of them ; all—all are false, and honesty has ceased to exist among us, except in the person of the *honest Iago* at the bar. If such a man as your Judge of Probate, who is so strong a witness for the prosecution, is to be attacked when he takes the stand, and you are to be told to discredit his testimony because he is under excitement and does not know himself, it is vain for any man to attempt to escape the “slings and arrows” which the gentleman, in the desperation of defence, hurls at us all. If you are to be imposed upon by such arguments as these, I do not see why we should attempt to try or decide upon any case. I never expect to be able to bring forward better witnesses than many who have given their testimony upon this occasion. You, gentlemen, may be called upon yourselves, at some future time, to give evidence in a case of this kind. I ask you to protect *yourselves* against such insinuations and

attacks as have been made upon the character of witnesses during this trial. It is the *offensiveness* of the bar that one man's reputation is to be impugned in order to get another man out of a scrape, and I ask you to set your faces against this practice—to put it down.

With these remarks I come to the examination of the testimony of the witnesses individually. And first, I take the Lady Superior, giving her that name, although the opposite counsel say there is no superior here. Gentlemen, in a college there is a President; in a school, a Master; in a Court, a Chief Justice. The lady whom you saw here is the Superior, or the head of her Convent, in the same way that you are Foreman, or head of the jury. It is said that she was brought here for effect. She was so. She was brought here to produce the effect that every honest and intelligent witness ought to produce, and no other. She was a necessary witness. She was called here to prove that she was the Superior. We had so stated it in the indictment; and had we failed to produce her here, our remissness would quickly have been pointed out by the gentlemen on the opposite side. To the two first counts she is an indispensable witness. My learned friend says, she is not to be believed. Do not you believe her, Mr. Foreman? She is accused of having told Mr. Cutter "that the Bishop had 20,000 of the vilest Irishmen under his control," and she acknowledges (much as such an acknowledgment might be supposed to operate against her), that she said so, or something to that effect. And is it wonderful that she should have given way to a momentary feeling of anger. Religious woman as she is, she has human feelings. Remember that on Saturday previous she was told that the Convent was to be pulled down; that a paragraph in a newspaper alluding to the escape of one of her family had been put into her hands by a stage-driver; that in the abduction of this female Mr. Cutter was a party; that she considered it an unfriendly and an unneighborly act; that he had not mentioned anything of it before to her. Do you think that it was kind on the part of Mr. Cutter to help off this runaway nun? Do you think it was a neighborly act

for Mr. Cutter to assist in getting away one of her family without notifying her of the fact—spreading a report so that it reached the newspapers—and then coming to ask her if it was true. Mr. Foreman, if one of your children had eloped, and had been assisted to do so by one of your neighbors who afterwards got up a story about it prejudicial to yourself, would you not think such conduct unkind? Was not what the Superior said mere retaliation? Was it not the language of nature and truth? “If you pull down my convent, your houses will also be pulled down! If you make an attack upon us in consequence of our religious opinions, an attack will be made upon you on similar grounds.” And she spoke truly. If this case be not settled rightly, no one can tell what consequences may ensue. Retaliatory outrages may be expected. It is human nature. But has the Bishop ordered out his 20,000 Irishmen? Where are they? I do not see an Irish face here. On their part all is calm and quiet. Look at the state of this lady. All her property gone. Every thing she was worth in the world—her institution—her school consigned to the flames. You have seen her here. Do you think she came into this court with malignity of heart. She had not mixed in the world for many years before she came from her convent upon the present occasion, with as much reluctance and alarm as would be felt by a modest female in appearing before you habited in the costume of her bed-chamber. But an all-controlling power was operating upon her mind. Nothing but the sublime and holy influence of religion could have rendered that woman so calm, so mild and so resigned as you beheld her. Her testimony was corroborated by that of the other nuns, and the counsel for the defence had no objection to make to them but their dress. I thought, interested as he is in this case, that he would have obtained some correct information upon this subject—that he would have made himself master of the history of the respectable order of which these women are members, before he said a word in favor of the man who wantonly made war upon it. They have been compelled to come here by the law, and have come in the dress which they ordinarily wear. They have no other.

Had my learned friend taken the trouble to inquire, he would have found that the community to which these ladies belong took 300 years ago the peculiar dress of the widows of that age, and have retained it ever since. In the same way that our Quakers retain the form of dress worn by their forefathers when that sect was first established. Peculiar the dress certainly is, but quite as modest and respectable as that in which the fashionable ladies of our day unveil their glowing beauties to the gaze of all observers. I may also inform you that there is a vast difference in convents. The Ursulines are well known to history as able instructors of youth; they are not mere recluses; and when other communities on the continent of Europe were put down by Napoleon, the *Ursuline* community was spared in consideration of the great services they rendered to society, and their freedom from the objectionable traits which characterized the economy of many other orders.

If you believe the testimony of these three female witnesses, the crime chargeable upon some one was perpetrated in all its parts. I call upon you to hold no compromise with your oaths in this particular. Go for the whole, or let the prisoner escape. If the convent was broken and burned, it was burned by a combination of individuals, and every man engaged in the transaction is equally guilty. If the prisoner was present consenting to the act, he is as guilty as if he had himself applied the torch. In the case of the Salem murder, Knapp although a quarter of a mile off when the deed was committed, was condemned and punished as a murderer. It is not necessary that the prisoner should have broken into or set fire to the building with his own hand; it is sufficient that he formed part of the gang who committed the outrage. To ascertain whether he was concerned, you must decide these questions:—Was this defendant at the gate? Was he at the bonfire? Was he in the house?

It is said this is a question of identity. So it is. When a crime is committed by some one, the question is—Who was it? Some crimes are committed by one man—others by two persons; never before by so many individuals as in the present case. We suppose the prisoner was concerned. I believe he

was, but I believe also that others were connected with the transaction, who urged him on and are as much to blame as he is. This man however, is charged with being one of the active agents in the affair. The principal question is, whether he was busy among the rest on the night of the 11th August. It is proved that he was, by sixteen witnesses. You trace him from before the offence was committed till breakfast time the next morning,—during every moment of the time. There is one remarkable fact connected with this matter. These men seemed to have set the law at defiance, and gone boldly and *undisguisedly* to work. First, he is seen by Messrs. Fay and Thaxter; then Fitz Cutter and Burbank hear him make use of remarkable language; Barrett and Sissons see him; then Coon, Gerry, Phelps, Littlefield and Hogan see him. These witnesses bring him to about the time when the bonfire was expiring. Then comes Buck, and he swears to him as being on the outside; then Logan, who saw him in the house; then Buck sees him again within; and lastly, there is the evidence of Parker and Thomas, the former of whom saw him at the engine while the convent was in flames, and the latter on the following morning at breakfast time. If this evidence will stand the test of scrutiny, where is the doubt? The prisoner is guilty unless Judge Fay and the others have all testified incorrectly. If the honest witnesses are mistaken, and others are liars, you can never hope to get any evidence upon which to found a verdict; but if you will believe human testimony, the man at the bar was at the fire. Upon the subject of time as connected with this matter, I would ask,—how are we to ascertain with certainty at what hour these witnesses got to the convent. By watches? “None go just alike but each believes his own.” I suppose you know that all persons who receive Irish boarders keep their clocks an hour too fast, for the purpose of getting their lodgers up in time for the railroad. When therefore, one of these men tells you at what time a certain circumstance happened, he either guesses or goes by one of these clocks. You saw a nun faint away in Court. Suppose you were now severally to mark down the

time when she did so—each guessing what the time was, would you have been within 15 minutes of each other. One of the learned counsel on the other side informed you that he should not impeach the character of Logan, though he afterwards did so. At what time, gentlemen, did he say this? We can guess, and that is all. How long was Buck on the stand? You all know that he *was* on the stand; but gentlemen, although you are twelve Yankees, you cannot guess any thing near the truth. You would vary as to the length of time; there is no such thing as being certain in this particular, unless, indeed, you have some accurate instrument to take an observation. Nothing is so uncertain as this evidence of time. The only circumstance of time in this case which we can calculate positively, is that of twilight. It seems that on the night in question, the sun set at eight minutes after seven, and twilight ended at seven minutes before nine. We know that people do not commonly light candles much before twilight is out. Mr. Thaxter says, he heard rumors in relation to the convent, at Watertown, while he was at tea; that he set out in his chaise, called upon Fay, and they then both rode down to the convent. “They stopped at Mr. Cutter’s by the way, and found candles lighted.” This proves that it must have been near nine o’clock. It was probably past nine when Fay and Thaxter got to the convent gate. If you believe this, we have a clue to the whole matter. The later you fix this time, the more certain becomes the prisoner’s guilt. All difficulty vanishes if you suppose that Fay arrived after twilight. Judge Fay and Mr. Thaxter say, they saw Buzzell at the gate. Burbank and Cutter could not see him because it was dark. Barrett and Sissons heard him and saw him. Coon, Gerry and Phelps saw him, and this brings him up to about ten o’clock. Littlefield and Hogan saw him afterwards. Now, if the fact is as they state it, Buzzell was there. You, gentlemen, do not doubt their veracity. The only question is, are they certain as to the identity of the prisoner. Judge Fay knew him as a low, dirty fellow, using filthy language in reply to a question which he (Fay) put to him, and

the Judge says, Buzzell is the man. I say, he swears it. For how does any man swear to the identity of another? If I met you, Mr. Foreman, in the street, I should say, I think that is the Foreman—it would be my opinion. Fay speaks this with regard to Buzzell. His opinion is not a sudden one, but formed on deliberation and with care. When you meet an individual whom you have only once seen, or who has returned after a long absence, you may at first doubt his identity; but you look at him again, and are certain. Are you less certain because you doubted at first, and is your testimony entitled to less credit, or to more? Judge Fay saw the prisoner at Charlestown, two days after seeing him at the convent gate. He was then in his brickmaker's dress, and Fay knew him directly; had no doubt about the matter—heard his voice, and was very certain. But it is said to be impossible that Fay should distinguish him by his voice. I want to know why? Does not the human voice furnish a certain method of ascertaining identity? Judge Fay heard him talk at Charlestown—heard him speak angrily; for the prisoner was irritated at the testimony which was there given against him. Judge Fay heard him, and was satisfied he knew him.

But it is said that the prisoner had a cold, and was so hoarse that his voice could not be recognised. This whole argument is based on error. It is a mistake to say that a man's voice cannot be known because he has a cold. I have no doubt that any of my friends who should hear my voice at this moment, would feel satisfied as to who was speaking, although they might not be able to see me. [The Attorney General was laboring under a severe cold.] It is not true that hoarseness changes a man's voice so entirely that it cannot be recognised. I appeal to the experience of the present moment.

We come next to the evidence of Mr. Thaxter. He did not know that Mr. Fay had identified this man; but yet, he comes into court and says the prisoner is the individual whom he saw at the gate. He comes to this conclusion from all things put together; he does not form his opinion from any one particular feature—from height, breadth of shoulder, or the fact

of the prisoner's having a thin nose ; but from his *tout ensemble*—the whole of his appearance. Mr. Thaxter hesitated a little at first—he did not like to express an opinion until he was perfectly certain, knowing the sort of cross-examination to which he would be subjected by the defence ; but, having made up his mind, he swears to you that he has no doubt this is the man he saw at the gate. It is said, Mr. Thaxter scarcely ever heard the prisoner's voice after the interview at the gate. Why, he heard him say “challenge” no less than eighteen times, and “no objection” several times more. Mr. Thaxter heard enough to satisfy himself in this respect.

Mr. Fitz Cutter was sitting at his window, and heard somebody give a vulgar answer to Fay. He could not *see* who it was, but tells you he has no doubt it was Buzzell. And if *he* does not doubt, why should you? Mr. Cutter is not a very swift witness for the government. But there is a circumstance connected with this question of voice, that places the whole matter beyond a doubt. Lorenzo Burbank, a wagon driver, tells you that he went to Cutter's the next morning, and asked him, “if he heard JOHN BUZZELL give that dirty answer to Judge Fay?” Now this is proof incontestible.

The next witness is George R. Barrett. He has no connection with Fay and Thaxter ; and in all probability, never saw Cutter or Burbank before he saw them in this court. He is a boy, employed in a counting room at Boston. He and Sissons heard that the Convent was to be pulled down, and they went to see what was doing. He was at the gate, saw the prisoner at the bar, and says he is the man who gave the vulgar answer to Judge Fay. With the natural curiosity of a boy, he went up within a foot of the man, and looked him full in the face ; he wished to know who it was who had the boldness to make such a reply to the Judge of Probate. He had no idea that Buzzell would be brought up ; but he looked steadfastly at him, and now he says, as Nathan to David, “*thou art the man.*” If there is no reason to doubt the honesty of Barrett, the fact is fixed. But driven from pillar to post by the cross-examination of the prisoner's counsel, he is

at last forced into what is said to be a contradiction, and says that the man at the convent gate had whiskers. And the counsel for the defence maintain that Buzzell had no whiskers on the night of the fire; but that another man like Buzzell was furnished with those appendages. Suppose Barrett to be mistaken in this particular. Is it one of those errors that should destroy the credibility of a witness, or is it one of those variations to which I have previously alluded, and which establish a witness' truth. Barrett did not mention the whiskers as a *distinguishing trait* by which he recognised the prisoner; he knew him by his general appearance—his boisterous manner—and the filthy answer he gave to Judge Fay. But is Barrett mistaken? One of my friends of the defence (Farley), is pretty smooth-faced, but yet he has whiskers; and if the prisoner had as many hairs on his face as the gentlemen to whom I allude, he may certainly be said to have worn whiskers. In point of fact then, he had whiskers. Coburn, the officer who arrested him, says he had *ear-locks*. Consider, then, how far a man may safely distinguish between ear-locks and whiskers. In the hurry of the moment and the obscurity of the evening, Barrett might easily have mistaken ear-locks for whiskers. Buzzell may now make his whiskers ear-locks to the eye, by simply pulling up his shirt collar. At the recent trial of the pirates, a whole day was consumed in ascertaining whether the binding of a man's shoes was such as described by a witness, and in the end the witness was found to have been mistaken; but did the jurors when they retired to consult upon their verdict in that case, consider this variance of any importance? They did not. The fact is, counsel are *up* to things of this kind; and when rowing against wind and tide, they avail themselves of a trivial variance such as the present, for the erection of elaborate and ingenious, but groundless and sophistical theories. You find, that no other witness in the case can tell whether the prisoner had whiskers or not, although they all identify him, thus proving that whiskers formed no item in their means of recognition. This variance is one of those circumstances that do not go to shake a witness' testimony, but rather to confirm

it. I dismiss, however, the subject of whiskers. I might dismiss also, the testimony of Barrett, and then there would remain more than sufficient evidence to prove the guilt of the defendant. But I call upon you not to do so. I submit to you that Barrett did not form his opinion as to the identity of Buzzell by reference to the whiskers of that individual. He drew his conclusions from the prisoner's whole appearance. And there is no mistaking this man; he might be picked out from a thousand; his *tout ensemble* leaves an impression upon the mind never to be forgotten.

Next comes the testimony of Sissons. He thinks the prisoner is the man he saw at the convent gate, but will not be certain. He does not know whether the man wore whiskers or not. They certainly could not have been large and conspicuous, or some of the witnesses would have noticed them.

Then we have John Coon, a foreigner, who, the gentlemen politely tells us, comes under the denomination of imported testimony, which however they use themselves. Coon is a reluctant witness. He tells you he only spoke at his shop, of having seen Buzzell, and did not expect that what he said would be carried out. Coon knew Buzzell. Not by any peculiar marks, but in the same way that you know your family. It is almost impossible for a man to say by what he knows his own children. I know you, gentlemen; should know you if I met you in the street; but I could not if I were asked, state the particular features which enable me to recognise you.

It is difficult to explain a simple idea to another's mind, because there is nothing more simple by which to explain it. Thus, we can give a blind man no idea of color, or a deaf man, *ex nativitate*, any idea of sound. The nearest which any philosopher has come to this, is found in the answer of the blind man who said, after a day's effort to understand the matter, that the color of scarlet must be very much like the sound of a trumpet. So it is with all primary ideas, and with the identity of individuals. We cannot tell how we get the ideas that enable us to distinguish persons; all we can say is, that

we know them. Until after the last judgment, when new faculties may be given to us, this is all we shall ever be able to do. If a jury will not believe a man, when he says of another, "I know him," it is idle ever to adduce testimony in a Court of Justice.

Coon had known Buzzell, he tells you, for more than a year, and saw him go up the convent avenue on the night of the fire; saw him with the mob who were shouting before, and ran up the avenue to, the building, and abused the Superior. Coon never meant to tell this—he did not wish to tell it—but being put on oath, he yields like an honest man, his regard for the prisoner, to the obligation of his oath.

Next, we have GERRY,—and, if you believe him, there can be no doubt of the guilt of Buzzell. Had I time, I would devote a quarter of an hour to some remarks upon the manner in which this witness was treated on the stand, by the counsel for the prisoner—upon the cruelty exercised towards him. I hold the treatment received by Col. Gerry, a few days ago, to be the most perfect piece of violence ever perpetrated in a court of justice. Elbridge Gerry, the name of the witness, is a name, which, to me personally, is entitled to the highest respect; but the present witness, who bears it, I have never before had the pleasure to see, or know. This witness picked up, out of mere curiosity, two or three trifling prints (children's pictures,) that were lying on the ground, near where he was standing. He carried them home—showed them, as curiosities, to every one who came to his house—made no secret of the matter—and, for this, he has been represented as a thief; and, I believe, one of the gentlemen on the other side (Mr. Farley,) insinuated that part of the one thousand dollars, stolen from the Superior's desk, might have found its way into Col. Gerry's pockets. If, gentlemen of the jury, you believe these insinuations against Gerry, so wholly gratuitous and imaginary, and do not believe the evidence which has been adduced against the prisoner, you will "strain at a gnat, and swallow a camel." Gentlemen, I protest against this outrage on Col. Gerry. It is in the worst style of the worst sort of the offensiveness of the Bar, and I call

on you to protect yourselves, by protecting him. But I dismiss this subject, believing Col. Gerry's character to be too well known to be injured by the coarse remarks of my learned friends; and ask you, in God's name, what possible motive these witnesses can have to perjure themselves, or to induce them to seek Buzzell's life? Gerry has a peculiar faculty,* and he tells you, in the most positive and confident terms, that he saw Buzzell busy among the mob; says he could distinguish his features, with as much certainty, as he could those of a person on the other side of the Court.

NOW COMES EDWARD PHELPS. Nobody came unscathed from the hands of my learned brethren—none escaped without a shot of some kind—and to this witness it was objected, that he said he would not criminate himself. He was asked, if he was a thief, and he replied, indignantly, "No! and if I was, I would not criminate myself, by telling you." I can only say, continued Mr. Attorney, that if these attempts of the gentlemen on the other side are successful, trial by jury will very soon be brought into contempt. Phelps corroborates Gerry, and identifies Buzzell.

LITTLEFIELD is the next witness, and he corroborates Gerry, excepting in relation to the manner of bringing the tar barrel. Gerry says, the prisoner brought the barrel on his shoulder, and Littlefield, that he carried it in front of his person. Is this a contradiction? The apparent difference is easily reconciled. Both witnesses did not see the prisoner at the same moment. He had, probably, a mile to go for the tar barrel, and did not carry it in the same position the whole way. When Littlefield saw him, he had it in front, and when Gerry saw him, he bore it on his shoulder. Where is the inconsistency? It is in the argument of the learned gentlemen. The witnesses do not say that they both saw the man at the same moment.

This brings us up to the tar barrel affair. He is seen busy in

* The Attorney General alluded to Col. Gerry's sporting capability. He, (Col. G.) stated on the stand, that he could tell, in the night-time, the names of the various birds that rose before him.

making the bonfire, and, when this signal-fire is lighted, and the gathering multitude of rioters assemble, and all is ready, where did he go? Where was he while the convent was being sacked? He was not seen, at that time, by any witness, but Buck and Logan. This strikes me as a fact of immense importance. He is not seen any where out of the convent, at this time, when, they say, he was within. But when the building is in flames, and all are forced to leave it, the prisoner is again seen, by Jesse Templeton and Asa D. Parker. When all is over, he comes down to the engine, and is there asked to sing the *Io Triumphe*, or the *Jim Crow* of the mob.

Now, here is a chain of evidence, every link of which you may ring, and it sounds truly. It is without flaw—there is no gainsaying it, but by denying the truth of all human testimony.

JESSE TEMPLETON is brought here, and says, that he took gin and molasses with Buzzell, at Ford's store, on the night of the fire. They would have this an *alibi*. They say, that Buzzell could not have been at the store, and at the fire, at one and the same time. But he went from the shop to the house, then to the gate, and got there, as already stated. Fay was then at the gate, where he came, thrusting himself in, and exclaiming, boisterously, that he was the man who whipped *their* Irishman. So far from being a contradiction, it is a coincidence. It proves, that, after leaving work, he took gin—fit preparation for the outrage he was about to commit—then went towards his house, and afterwards to the gate. Azariah Holmes says, he saw him at Kelley's house, at nine, by his (Holmes',) watch. The prisoner's counsel would have us believe, that all this was measured by "Shrewsbury clock," instead of the "turnips" these men carry. When Buzzell came from Ford's, he might have stopped a little time at his boarding house, and then gone to the Convent gate. There is not the slightest inconsistency in this. He had to pass by his boarding house, on his way to the gate, and it is quite natural that he should have stopped there for a few moments, and been seen, as stated by one of the previous witnesses. Or he might have gone there after the interview with Fay. his, however, is not my view of the case.

I believe he was first at Ford's, then at Kelley's, and next at the Convent gate. This explains the testimony of his brother, who might have seen him sitting on the grass, as stated, either before, or after, he was seen by Judge Fay. I beg you, gentlemen, to observe these coincidences. Judge Fay got to the Convent at a certain time. Runey comes, and the crowd of people at the gate disperse. The children at the nunnery go to bed, and there is an interval of an hour's quietness, at the expiration of which, the prisoner was seen to go up to the gate. He might have gone back, after his conversation with Fay, been in Kelley's yard for half an hour, and still in time to fetch the tar-barrels for the bonfire. This is the identification as to time, and, if I am not deceived, it is perfect. There is no inconsistency in any part of it.

I now proceed to the identification by circumstances. No one doubts there was a man at the Convent gate, who had distinguishing marks about him. No one doubts that this man spoke to Judge Fay, and gave that gentleman a vulgar name as his own. He said, also, that he had licked their Irishman, and called himself "old R." or Barrett and Sisson tell you what is not true. Who then is "old R."? It is the common nickname of the prisoner. I will not detain you on this point. To a greater or less extent, it was known to several of the witnesses, and one of the swiftest witnesses for the Defendant says, that one of the Buzzells was so called, and David Kelley says, he has heard him call himself by that name. This man was also large and stout; he was in his shirt sleeves, had a white tarpaulin hat, clay on his clothes, looked like a brickmaker, and made threats; finally, went down to Runey's wagon. There are eight particular circumstances by which this man, whoever he was, is known; viz. he gave a vulgar name to Judge Fay; licked an Irishman; called himself "old R."; was a large, tall man; was in his shirt sleeves, and had a tarpaulin hat; was a brickmaker; made threats that the convent should come down; and, when Judge Fay left, went down to Runey's wagon. Now you are to inquire, what man answers to these marks. The prisoner conforms to them in every particular. He was the man who gave

the vulgar answer ; the man who licked *their* Irishman ; who called himself "old R." ; who was in his shirt sleeves ; he was a brickmaker ; he made threats ; and, finally, went down to Runey's wagon.

But there is a man who says he knows Buzzell, and saw an individual, whom he took for Buzzell, on the night of the fire, but afterwards found he was mistaken. This is to say, that there was another tall man at the fire besides Buzzell. You cannot get an hundred men together, without finding a tall man among them. But the prisoner at the bar is not identified by his tallness. Smith says, he thought it was Buzzell, but afterwards found it was not him. Suppose it to be so, how does it weaken the Government's case ? It only shows that somebody like Buzzell was also at the fire. Will you discredit the host of witnesses you have heard, because Smith happened to see a man, whom he mistook for Buzzell ? But he might have seen Buzzell ; the latter might have retired into the crowd, and Smith might have spoken to another person. It is an important fact that no man ever comes into court with a direct perjury. The flattering unction such a man lays to his soul is equivocation. He never dares to raise his hand to God, with a direct falsehood upon his lips ; but equivocates, and "palters with us in a double sense." When Smith swears he saw a man whom he thought was Buzzell, he, perhaps, speaks truly ; but he does not say, that the man he spoke to, was the same man he so supposed to be Buzzell. And why are you now called upon to give this man implicit credence ? Is it because he says, that, after this iniquitous outrage, he held his peace ? He knew all these brickmakers, and was asked about them before the Boston Committee, but he would give no information. They proceeded to investigate this matter ; they wanted to know, not only who *did* the mischief, but who were present at the fire, in order that information might be obtained from them. This young man was sent for ; he was inquired of ; but he is dumb as the tomb. He will not tell, because, as he says, he is afraid of getting people into trouble. He was there himself, and he was called before the committee, but he did not get into

trouble. If he knew the makers of this mischief, he would not get them into trouble. He consents to the mischief. His secrecy is strange, and it will be well for him if the grand jury do not think so. Any man who has knowledge of the commission of an act of villainy, and of the names of the offenders, and refuses to impart that knowledge, is guilty of a misdemeanor. When the Governor, and the magistrates of Charlestown, issued their offer of reward for information, it became the duty of every good citizen, to tell all he knew about the matter ; not for the sake of the reward, but to further the ends of justice. The Court will tell you it is misprision of felony to conceal the names of any concerned, and that that offence puts every man committing it, in danger of the state prison. This young man came upon the stand to publish his own conduct. I leave you, therefore, to decide upon the degree of consideration which ought to be given to his subsequent testimony.

The counsel for the prisoner tell us we should have sent for this individual to identify the prisoner. A pretty course that would have been, when he had already declared to the Committee, that he would not point out any of the offenders, although he knew them. Some of the statements made by Smith, I doubt not, are true ; but you are to decide if he keeps a literal truth on his lips, while he gives you a substantial falsehood. Suppose he did see a man he thought was Buzzell, and afterwards found it was not him ; is that circumstance to do away the testimony of Gerry, Fay, and all the others, who tell you they did see him ? You cannot expect to find a capital ease without some difficulty of this kind. If there were no difficulty, you, gentlemen, would not be sitting where you are. The constable would do as well as twelve men. It is your sacred duty to look to this matter ; not to be deceived ; not to allow these double-dealing men to influence you. Do not expect that you are always to have the current in your favor, or that the first rock is to make shipwreck of the case.

The gentlemen would have you believe that the tall, seafaring man, with large whiskers, was mistaken for Buzzell, throughout

the whole affair ; and yet, they tell you that this man had on a coat, which he took off and threw upon the engine, at the time the convent was in flames, while Judge Fay tells you positively, that the man he saw at the gate was long before in his shirt sleeves. The whole character of the man seen by Fay, was that of a brickmaker, and not a seaman. This brickmaker, who gave a filthy answer to Judge Fay, said, also, he licked an Irishman, and, in connection with this, remarked, that "they knew him up there, and would know more of him by and by." Now this individual was a man of peculiar size and character, and it will not do to talk of Tom, Dick and Harry, in relation to the whipping spoken of. This man was a man "whom the convent people knew, and of whom they would know more." Justice Soley, Drs. Thompson and Rossiter, say, that he was whipped, and there never was but one Irish domestic at the convent whipped. Who whipped him? The prisoner at the bar. Rossiter swears that Buzzell whipped him, and Stearns, also, swears that he saw the brutal injury inflicted. This changes the burden of proof, from the government to the defendant. If a man, at a certain time, says he did a certain thing, and the man, so saying, is distinguished by marks and numbers, and, if, when called to answer, the prisoner answers to these marks and numbers, he must, to get clear of the fact, find just such a man as himself, who answers to such marks and numbers. That other Irishmen may have been whipped by brickmakers is true. The gentlemen on the opposite have all the brickmakers in Charlestown within reach of a process ; the whole Treasury of the Commonwealth is at their command, to procure the attendance of a witness of this kind, and if such an one could have been found, you would have seen him on the stand. It is for the prisoner to prove, that another man than he spoke to Judge Fay at the gate, and whipped an Irish domestic of the convent, and called himself "old R." The burden of proof rests upon him. The books are full of instances of this kind. One man's sword is found sticking in the body of another, and the former is seen running away. Now it is possible that the sword of the person running away might have been stolen, and used to commit the mur-

der; but it is for him to prove this. So in the present case. The prisoner has to prove that another brickmaker whipped one of the convent Irishmen. That the man at the gate did allude to an Irishman at the convent, cannot be doubted. It does not rest on the testimony of Fay alone. Thaxter corroborates Fay, and swears that what the prisoner said, was in allusion to the convent people. So, also, is the testimony of Barrett and Sisson.

I ask you, gentlemen, not to suffer yourselves to be frightened by possibilities. If we suffer possibilities to take the place of probabilities, we shall never get along in any case. When a man says he did a thing, and we prove that he did it, there is conclusive evidence. He must show that we are mistaken. In this case, he must show a brickmaker, in his shirt sleeves, speaking to Fay, at the convent gate, who whipped one of the convent Irishmen. But he does not do so. All he attempts to show, is, that Irishmen have been whipped.

The mob held a caucus; a sort of infernal town meeting. This is the evidence of Littlefield, Hogan and Gerry. They tell you that a ring was made, and that Buzzell was there; that the mob consulted together, and, thinking they had not enough hands, were on the point of dispersing, when the same sort of man that spoke with Fay at the gate, undertakes to stop them, and tells them, if they will wait fifteen minutes, he will bring a tar barrel. This is agreed to, and he goes off, shortly returns with a tar barrel, and the witnesses see him assist in kindling the flames. One of the mob is then sent off to ring the Charlestown bell, the engines come, people assemble, and the rioters then commence pulling down the building. I might rest the case here. It stands securely at this stage of the evidence.

I am reminded that the senior counsel for the defence took a distinction here, and contended that this defendant might have been at the gate, and talked with Judge Fay, and still be ignorant of the subsequent outrages at the convent. It would be easy to show, that the distinction, taken by the learned gentleman, is groundless; it is not necessary, however, that I should do so, because we prove the prisoner to have been both at the

gate on the bonfire, and engaged in the destruction of the convent. He runs through the whole piece—is found in every scene. We have adduced abundant evidence, to change the burden of proof. If the prisoner was not at the bonfire, but among his friends, he could have brought them all here to show it. But he does not do so.

We come now to other testimony, which, however, you might throw out entirely, without weakening the case for the government. *Buck* is an accomplice. What then? An accomplice is a competent witness. But *Buck*, they say, is a scoundrel. A scoundrel is, then, a competent witness. A thief may impeach his companions. He is a knave, like his accomplices; but if the law permits him to take the stand, he is a competent witness, and you must hear him.

Now look at *Henry Buck*, a lad of 19. Do you believe he set this thing going? that he had such a regard for the Protestant religion, as to pull down a Catholic convent? Do you believe he would have cared one cent, if it had been a Turkish mosque, or a seraglio? Think you he would have removed one stone, in order to preserve the public morals from contamination? Not he! Some one set him on. I cannot tell you who it was; my tongue is tied. *But he was set on*, and the parties who set him on may one day be known; I THINK I KNOW THEM NOW. There are some rules of law, on the subject of accomplices, worthy your notice. [The Attorney General then stated them at large.] This witness complies with these rules. He tells his own agency in the transaction. He keeps nothing back; he discloses all his guilt. He does not hide his share of crime. It is necessary, that he should be corroborated, in order to be believed; for although men have been condemned on the uncorroborated testimony of an accomplice, that would not be safe, and I would not advise it, on any occasion.

Let me call your attention to the policy of the law in relation to this matter. Criminals fear and distrust their companions. There would be no safety for honest men, if rogues might confederate without fear of each other. The law means to

break up the adage of "honor among thieves." It means to destroy their confidence in each other. We might shut up all Courts of Justice, was the law otherwise. The sheriff cannot, in nine cases out of ten, go after a thief, until he has got information from an accomplice. If you will not believe an accomplice, you bind all these villains together. The murder at Salem would have remained undiscovered, but for the testimony of an accomplice, and that accomplice afterwards suffered death, in consequence of having forfeited his pledge to the government.

This matter is of importance. We must put some confidence in an accomplice, or it would be useless to permit him to take the stand. There is public policy in this. Our greatest security consists in rendering villains distrustful of their confederates. By this means, they are obliged to go to work singly, and the danger from confederacy and numbers is at an end. Were there no receivers, there would be no thieves. Whenever stolen property is not recovered by the rightful owner, it is because the thieves have been true to each other. If you declare that you will not credit an accomplice, you bind all these men together as a band of brothers. They will say among themselves, "There is no danger of this fellow impeaching us; if he does, he cannot convict us, for these incredulous jurors will not believe a word he says." The counsel for the prisoner ask you, gentlemen, to put this language into the mouths of all these villains; to give them a *carte blanche* for mischief. I caution you not to establish a principle of this kind. Look at the testimony of this accomplice, and see if it is not corroborated. If it is not, give him to the wind; but if it is, do not fear to do your duty.

Let us see, then, if he is corroborated. In the first place, he accuses a man who is pitched upon by sixteen other witnesses. In this respect he is corroborated. Buck says, he saw Buzzell tear down the convent fence, and help to make the bonfire. Hogan, Gerry, Littlefield and Phelps, say the same thing. He says that Buzzell brought a tar barrel, and set it on fire, in order to collect a crowd, and the fact is stated by several

other witnesses. The only statement of Buck's which is not corroborated, is his assertion that he knew Buzzell. And in this saying, he only clinches the nail that had been driven by others. The devil, we are told, can quote scripture; and a thief, I tell you, may, under certain circumstances, speak the truth. No man comes on the stand, and undertakes to tell a long and false story, without leaving loop-holes, which such counsel as the gentlemen on the other side would quickly discern, and through which they would quickly cut up his testimony.

Buck says he went to the convent, and committed depredations, and that he saw Buzzell there also. This testimony does not stand alone, because if you prove the prisoner to have been engaged in the affair of the tar barrels, it is to be supposed that he also went into the convent. Had Buck told you that he saw Buzzell busy with the tar barrels, and did *not* see him in the building, you might, with reason and propriety, have doubted his veracity. When Buck comes to the interior of the convent, we are able to corroborate him by Logan. Logan was never known to Buck; they only happened to be in the convent together, and saw and described the same occurrences. Thus far, then, the accomplice answers all claims made upon him. But I will go further. I have said he is to tell you the whole truth. Judge whether or not he has done so. He is a boy hanging loose on the world. He told you where he was born—the different places he had worked at—and even that he had changed his name. He did not know that people would be brought in from the different places where he had resided,—he did not know, when he was questioned by counsel, that he should be confronted with his employers,—yet you saw he answered truly the questions that were put to him.

It is an important fact, also, that no part of the evidence given in court by the other witnesses, was known to him; he never heard a word of it. If, therefore, these witnesses corroborate him, he must have drawn the testimony he gave here from the same fountain of truth.

He has told you of two meetings at the school-house. And

upon this point we can offer you no other testimony, because all who were present there were accomplices also. But in this respect, circumstances, that cannot lie, corroborate him. It was well known that the convent was to come down. The stageman knew it on Saturday — several of the witnesses from Boston knew it. Mr. Thaxter heard of it in Watertown. There were rumors every where. How came these rumors abroad? There must have been a confederacy. Buck tells you there were two meetings of the conspirators, and that they did not then proceed to action, because they had not hands enough for the work. And was there not a caucus held at the gate, on the night of the fire, where the same statements were made? Was there not a ring formed, and did they not propose to put off the outrage till another night, because they “were not then strong enough to do the infernal deed?” Here is confirmation of Buck’s statement, “strong as proof of holy writ.”

But the learned gentlemen attempt to disprove his testimony by that of *Tufts*, who, they say, lived near the school-house, and did not know any thing of the meetings. Most “lame and impotent conclusion.” The witness himself stated before you, gentlemen, that he was usually abed and asleep before the hour at which the meetings took place. But Buck puts himself completely into your power, in this matter. He tells you that he was sent to call Kelley’s men to the second meeting, and that they replied they were “*all up to it, and would be there.*” If he spoke falsely, how easily might he be contradicted. But not one of Kelley’s men came forward to contradict him. Again, Buck is asked how he came to go down to the convent on the night of the fire, and he says he did so in consequence of what Mr. Adams told him. If he told a lie in this particular, why is not Mr. Adams here to prove the falsehood. Gentlemen, take my word for it, no man puts himself in the power of another if he means to tell lies. Liars deal in generalities, not in minutæ. Buck says, that when the ring was formed, the mob were not at first disposed to commence the work of destruction; they said there

were not enough hands. Does not Gerry tell you the same thing? Buck here puts it in the power of Gerry or the other witnesses to contradict him if he had spoken falsely. He says also, that about thirty of the mob went up to the convent and shouted, but came down again without doing any thing, and this statement is confirmed by the Superior and Gerry; the latter heard the shouts at a considerable distance. He tells you about the tar barrels, the Charlestown bells being rung, and the engines coming. If these things were not so—if he had told falsehoods, they could be instantly detected; but on the contrary, he is *confirmed* by all the witnesses. There is another important fact illustrative of Buck's veracity. He tells you that it was proposed to tear down a blacksmith's shop, a piece of mischief which was doubtless projected for the purpose of keeping the mob together. Now there was no need of his telling this if it were not true. It does not bear upon the case at all. Phelps says there was something of this kind. That it was proposed to pull down some hovels near a blacksmith's shop. Even this minute truth Buck tells you in his anxiety to fulfil the terms of his contract with the government. He says also that Kelley was at one of these meetings; there again you might contradict him if he lied. He says that the mob did not break Kelley's fence, when they were told that it was his. Look at the plan, Gentlemen, which has been made by the surveyor, and you will find Kelley's fence untouched. Again he says, that one of the engines that came up first, instead of going to the bonfire, proceeded strait up the avenue to the convent. There the enginemen might disprove his testimony were it not true. He tells you the extraordinary fact (which I am happy to say can be satisfactorily explained) that of the engine going *from* the fire instead of *to* it. Immediately afterwards the Convent was attacked, and here he begins to show you his own agency in the affair. He tells you that he took a piece of wood and with others jammed the door open. Hooper and Balfour, and many others, say this was the way their entry was made. He next informs

you that the mob waited till they had ascertained if the inmates were all out ; and Hooper says he told them that there was a sick woman and children within the building, and they said *they* should not be hurt, but *that the Cross must come down*. Buck then states that he got into the Convent and commenced throwing out the furniture, &c.; and Hooper tells you he was obliged to get from under the windows to avoid being struck by the articles which were cast out. Buck says, the mob were armed with pieces of wood, and this is confirmed by Logan and others. Here then are facts stated, all of which might be controverted if they were not founded in truth, but which are in the fullest manner confirmed. Buck is now inside the building ; there he says he took property himself and saw others take it,—saw them breaking open drawers and commencing a work of plunder which I trust will never again disgrace this country. He says, lights were procured from an engine torch, and Hooper says the same. The next fact he tells you is THAT HE SAW BUZZELL THERE WITH A CLUB IN HIS HAND. Now look at this in connection with what has been stated by other witnesses. Barrett tells you that Buzzell said he was “ready to be the first man to break into the Convent,” and here is Buck who saw him in the building with a club in his hand. Sissons and Barrett say they heard him say “I am old R. and will be on hand.” The time had come for him to be on hand. Nobody was likely to see him but an accomplice, and here is the accomplice testifying to the fact.

Buck says there were lights, and Balfour and Logan tell you that the mob lighted the candles which they found in the Convent. He states too that the first fire was made in the chapel, and Draper confirms this statement. Buck is cautious; he does not tell more than he actually saw. He did not see Buzzell set the fire, and he says so. If he wanted to convict Buzzell he would say he saw him fire the building, burn the bible, trample on the cross, heave out the image of the Saviour, and participate in all that brutality of outrage which disgraced the horrid scene, and which makes the heart sick

to contemplate—but he does not. He does not unnecessarily or falsely criminate the prisoner. He says “I broke in the door, but Buzzell did not.” If he came here to lie, why not do so through thick and thin. He has not said any one thing from the beginning to the end which any body contradicts under oath. He has said that there was a person called Cutter at the meeting at the schoolhouse. It is not pretended that either Mr. Fitz or Mr. Edward Cutter was the person alluded to; but still there may have been a Cutter at the meetings. Did every one use his own name? Who was the Mr. Cutter at the meeting may come out in due time. What is more likely than that men engaged in such an affair as this should take other men’s names? Nicknames we know were in vogue among them. Kelley, for example, was called Priest Kelly and sometimes Priest. Suppose another individual chose to take the appellation of Cutter Jones, and was addressed by the first name, Cutter, for shortness? Why should he bring Cutter’s name into this matter if he had not heard it? What motive was there for him to do so? None but his determination to tell the whole truth, even the most minute circumstance. He knows that he agreed to tell every thing, and he feels the necessity of keeping his word. And permit me to tell you that the most valuable service rendered by an accomplice is his testifying, not so much to positive as to collateral facts.

There is another important point connected with this part of the subject. Buck was present during the whole affair, and knew his associates—he knew who was guilty. If Buzzell had not been engaged in the transaction, is it likely that Buck would have selected him? Would he, if he wanted to procure a conviction as the gentleman says, have selected an innocent man, when there were so many guilty ones around him, who would have so much better answered his purpose? He would have felt sure that an innocent man would have convicted him of falsehood. Is it likely, even supposing his own safety to depend upon his procuring the conviction of another, that he would, bad as he may be, have so gratuitously undertaken to

swear away the life of an innocent man?—that he should have put himself to the trouble of inventing a tale of guilt, and expose himself to the hazard of maintaining it on the stand, when there were so many guilty persons on all sides of him, and the story of their guilt ready made to his hands? No, gentlemen, depend upon it, if Buck says this man is guilty, he *is* guilty. Buck could have no motive for testifying falsely in this respect. Again, is not the charge against Buzzell in perfect accordance with the character of that individual? The gentlemen talk of his good character. No man can have a good character who would beat another in the way that he beat Rossiter. Buzzell is a large man; in comparison with him, Rossiter is a baby. Judge of his character from his behavior to Judge Fay at the gate. Afterwards, when the convent was on fire—when every other man's heart would have sunk into his shoes, this man is called upon to sing the *Io triumphe*, and with a vulgar song crown the atrocities of the night. But I have not done with the corroborations of Buck's testimony. They multiply under my hands. He says, that he saw a fellow carrying a brand to a small building, intending to set it on fire, but that he was prevented by an engine-man, who tried to arrest him, when the fellow cried for help, and Buzzell interfered. I was not able of myself to learn anything in connection with this point, but the gentlemen of the defence have themselves furnished me with the very thing I wanted. Barker, one of the witnesses for the prisoner, told you that when the main buildings were in flames, a small man and a large one came down from the convent together, and that the former said, "I tried twice to set fire to that building, and the fool of a Charlestown engine-man would not let me." Is not this an accidental corroboration of Buck, and from one of the defendant's own witnesses? Buck was to tell the whole truth, and he has done it. Gentlemen, let me ask you to consider the condition of this individual. If ever there was a person upon whom every possible obligation was at once operating to make him tell the truth, that person is Henry Buck. I may admit that if the screws were not on him, he might falsify. But as it is, he comes here with the belief

that if he is for a moment found tripping, he is a lost man. There is an accusation against him, of which he has confessed himself guilty ; and there is no hope for him but in telling the truth. All the penalties against perjury never equalled the power which is now operating upon this man, and obliging him to tell the truth. Even if the Governor and Council should take compassion upon his youth, the state prison, and that for life, must be his lot. But the counsel for the defence say, his testimony is impeached—that he was a lying boy when he lived at Plainfield, and they have brought individuals from New Hampshire to prove it. How idle was all this. The best answer to it is, he has never been accused and never convicted of any previous crime. To bring boys of seventeen to tell what his character was eight or nine years ago, is perfectly idle. There was no need of impeaching him. He impeaches himself. He tells you he is a Rioter, a Burglar, a Robber; seduced in this instance by older soldiers, if not better, he made war on the defenceless, he plundered the weak, he drove out the women from their fire-sides, and the children from their sleeping chambers. All this is horrible, most horrible. But what then? He had assistants, aiders, abettors, leaders in this terrible tragedy. He is a boy, active enough to execute, but unable to plan—ready to follow, but incompetent to lead. He knows his leaders, his associates, his companions in the midnight conclaves, and in that awful eruption which seemed as if all hell had poured its legions of infernal spirits to molest and to madden us. Who are they? He knows, and he tells you. He tells you the prisoner is one. Doubt him if you can. But look to it, that in professing to doubt what he says, you are not reckoned among those who are most deaf because they will not hear, and most blind because they willingly shut their eyes to the light. Have reason for your doubts, and do not make your own scepticism, your own unwillingness to believe, generate your supposed incredulity. Above all, gentlemen, take care that nobody shall say of you, you were willing to doubt, from

sympathy for the actors, or want of indignation for their execrable act. Buck's crime is not the worst that can be committed. He was an accessory to this deed of shame in the excitement of warm blood, in the ardor of the moment, in the thoughtlessness and rashness of youth. They will be accessories after the fact, who calmly, coolly, deliberately justify the incendiaries, or seek for any possible excuse to shelter them from punishment.

I now proceed to the testimony of James Logan; and here I should be justified in making a complaint, for Logan has been seriously injured. We supposed the character of all the witnesses might be attacked, excepting that of Messrs. Fay and Thaxter, and we had inquired about Logan, and produced evidence as to his character; but when the prisoner's counsel for the defence said he should not attack Logan's reputation, we told that person these witnesses need not remain. The very next morning, however, the gentleman opened his battery upon Logan, bringing persons in Logan's own trade to testify against him. Gardeners, certainly, are not the most important persons in the world to give opinions as to the witness' character. Two of a trade never agree, and perhaps in the present case Logan may have said their grapes were sour, or his may have been a little acid to their taste. But how is it on the other side. Although so short a time has been allowed, you have heard several of your most respectable fellow citizens, (among the rest, the Rev. Mr. Byrne), testify that the character of Logan is good; that they never heard anything against him. But the gentlemen of the defence say that his evidence is worth nothing—that "their not having heard anything against Logan," is but negative testimony. If the men in whose families Logan has lived for many years, know nothing against him, his character is good. And here is his priest. You have heard something in this case, of auricular confession, and I need not tell you, that if Logan had done anything wrong, the priest would know it. Permit me to tell you, that the testimony of Lo-

gan's clergyman is the very best testimony you could possibly have.

If Logan is even put out of the case by the attack that has been made upon him, the guilt of the prisoner is ascertained beyond a doubt. It may have seemed strange to you, gentlemen, that Logan should have accompanied the rioters from room to room, and taken from the convent several articles. His conduct *would* be strange in this particular, but for two circumstances. Logan is a Catholic, and he swears to you, that he went to the convent for the purpose of doing what good he could, and of protecting the helpless women and children whom he knew were within its walls. But fortunately, there was one true hearted American within the building. Walter Balfour went for the honest purpose of doing what he could, and all he could, for the protection of the fugitive family, and identifying the persons of the miscreants who were perpetrating this midnight felony. Both saw individuals, within the building whom they knew. Logan has told you, that he saw the prisoner at the bar, there, and Balfour will tell more when the proper time arrives for him to do so.

And now I ask you, gentlemen, what is your duty? If you have followed me in my argument, and have found no flaw in the case for the government, I ask you what you are to do? If you are put on the jury to let the prisoner escape, I know not but that you may do so in this, as in all cases; thus bringing trial by jury into uselessness and contempt. It will only be necessary for a prisoner to get false witnesses, and he is safe. I ask you to examine this as you would any other case. There is no mystery about it. You have been told that you are to have no reasonable doubt. Granted. But what are reasonable doubts. They are not mere possibilities. There never was a case in which there was not a possibility of a man's being innocent. We are to see whether the evidence leads the mind satisfactorily to a conviction of the prisoner's guilt; and where three or four credible witnesses have sworn that he is guilty, there can be no

reasonable doubt. It is only *reasonable satisfaction* that a jury has any right to expect. You are not to expect to see the crime committed. The murder at Salem was not committed in the presence of a jury. You are to put faith in human testimony; in the judgment, veracity, and fairness of upright and honorable men. On this, all our security in this world, and all our hopes of another, mainly depend. It is human testimony that governs all our actions, by which we move, in all the relations of life, and by which every thing dear to us is made safe and secure. You are not to doubt it without cause—from caprice, or stubbornness, or general incredulity. You are not, like the doubting apostle to say, “Unless I see in his hands the print of the nails, and put my finger into the print of the nails, I will not believe.” You are to draw your conclusions from facts, and are no more at liberty to palter with your oaths than a witness has to perjure himself on the stand. You know that crimes will be committed; that they must be punished. You know that human testimony can only come to a certain point; that there is a limit to its power, beyond which it cannot go, or be carried. Judge you, whether all has not been done in this case, that could be done in any case, to satisfy your minds. Facts, of various kinds and from various quarters, all converging, like the sun’s rays, to one focus, have been brought before you. If, notwithstanding such a concurrence of testimony and circumstances, this man is to go clear, there is an end of any confidence in trial by jury. We may give a *carte blanche* to criminals, for the law will henceforth be unable to restrain them. If you wish to support the institutions of your country, you must not put yourselves on the defence in this case. You must deal liberally and candidly with the government. You are not to demand what no human power can give, and then because it is not given set the prisoner at liberty. You will view this case in the same way that you would any other; carefully guarding both the rights of the prisoner, and the

best interests of the country; which country you are. Justice, and the supremacy of the law, are to be sustained by your verdict, which will be remembered as long as your country exists. Gentlemen, I have done my duty, imperfectly, perhaps ; go and do your's better.